

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
<b>PLAINTIFFS</b> <i>Nayna Patel and Vinod Patel</i>	<b>DEFENDANTS</b> <i>U.S. National Bank Association ET AL</i>			
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) <i>Charles W. Iles 7 George C. Wilson Ct Augusta, GA 30909 706-863-2255</i>	<b>ATTORNEYS</b> (If Known)			
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee			
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) <i>Preference Action Pursuant to 11 USC 547</i>				
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <b>FRBP 7001(1) – Recovery of Money/Property</b>  <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property  <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference  <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer  <input type="checkbox"/> 14-Recovery of money/property - other   <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b>  <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property   <b>FRBP 7001(3) – Approval of Sale of Property</b>  <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)   <b>FRBP 7001(4) – Objection/Revocation of Discharge</b>  <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)   <b>FRBP 7001(5) – Revocation of Confirmation</b>  <input type="checkbox"/> 51-Revocation of confirmation   <b>FRBP 7001(6) – Dischargeability</b>  <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims  <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud  <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; 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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$			
Other Relief Sought				

## B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <i>Nanya and Vinod Patel</i>	BANKRUPTCY CASE NO. <i>16-11274-SDB</i>	
DISTRICT IN WHICH CASE IS PENDING <i>SDGA</i>	DIVISION OFFICE <i>Augusta</i>	NAME OF JUDGE <i>Susan D. Barrett</i>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)  <i>Charles W. Wills</i>		
DATE <i>9-15-16</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF)  <i>Charles W. Wills</i>	

## INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

IN RE:	)	
	)	
NAYNA PATEL and VINOD PATEL,	)	CHAPTER 13
	)	CASE NO: 16-11274-SDB
Debtor.	)	
_____	)	
NAYNA PATEL and VINOD PATEL,	)	ADVERSARY PROCEEDING
	)	NO:
Plaintiffs,	)	
vs.	)	
	)	
US NATIONAL BANK ASSOCIATION,	)	
ET AL,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

COMES NOW, NAYNA PATEL and VINOD PATEL, Debtors and Plaintiffs in the above matters (hereinafter referred to as "Plaintiffs"), and respectfully file this Complaint seeking to avoid a preferential transfer pursuant to 11 U.S.C. §547, and would show as follows:

1. On September 15, 2016, Plaintiffs filed bankruptcy pursuant to Chapter 13 of the United States Code.

2. Defendant, U.S. NATIONAL BANK ASSOCIATION, ET AL (hereinafter referred to as "Defendant"), is subject to the jurisdiction of this Court. Defendant may be served with Summons and a photocopy of this Complaint by regular mail to its attorney of record in Columbia County Superior Court Civil Action No. 2016-CV-0130, to wit: Chester Jennings & Smith, LLC, 2882 Church Street, Atlanta, GA 30344.

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 157 and 133 and 11 U.S.C. Sections 362 and 542. This is a core proceeding under 28 U.S.C. Section 157(b) (2) (A) (E) and (O). Venue is proper pursuant to 28 U.S.C. Section 1409(a).

**COUNT ONE – PREFERENTIAL TRANSFER – 11. U.S.C. §547(b)**

4. Plaintiff repeats and re-alleges every allegation above as if set forth herein full.

5. Pursuant to 11. U.S.C. §547(b), a Debtor in Possession "may avoid any transfer of an interest of the Debtor in property" -

1. *to or for the benefit of a creditor;*
2. *for or on account of an antecedent debt owed by the Debtor before such transfer was made;*
3. *made while the Debtor was insolvent;*
4. *made –*  
*(A)... on or within ninety (90) days before the filing of the petition; or (B) between ninety days and one year before the date of the filing of the petition i f such creditor at the time of such transfer was an insider, and*
5. *that enables such creditor to receive more than such a creditor would receive i f –*  
*(A) the case were a case under chapter 7 of this title;*  
*(B) the transfer had not been made; and*  
*(C) such creditor received payment of such debt to the extent provided by the provisions of this title.*

6. On June 20, 2016, a Writ of Fieri Facias in favor of Defendant was recorded at Book 10400 and page 148 in the Superior Court of Columbia County (the "Judgment Lien"). Attached as Exhibit "A" is a true and accurate copy of the Judgment Lien.

7. The Judgment Lien was for or on account of an antecedent debt owed by the Plaintiffs before such transfer was made for the benefit of the Defendant, a creditor of the Debtor as contemplated by 11 U.S.C. § 547.

8. The Judgment Lien was recorded while Plaintiffs were insolvent.

9. The Judgment Lien allowed Defendant to receive more than it would receive in a Chapter 7 liquidation.

10. The Judgment Lien was recorded less than 90 days before filing of bankruptcy petition constituting a preferential transfer pursuant to 11 U.S.C. 547 and, therefore, the Judgment Lien should be avoided.

WHEREFORE, Plaintiffs pray:

- (a) That the Court issue a judgment in favor of Plaintiff avoiding the Judgment Lien as a preferential transfer pursuant to 11 U.S.C. §547; and
- (b) That the Court grant Plaintiff such other and further relief as the Court may deem equitable and just.

This 16<sup>th</sup> day of September, 2016.

  
/s/ Charles W. Wills

Charles W. Wills  
Attorney for Plaintiff/Debtor

KLOSINSKI OVERSTREET, LLP  
#7 George C. Wilson Court  
Augusta, Georgia 30909

# EXHIBIT "A"

BOOK 10400 PAGE 148

# WRIT OF FIERI FACIAS

## IN THE SUPERIOR COURT OF COLUMBIA, GEORGIA

CIVIL ACTION 2016CV0130U.S. BANK NATIONAL ASSOCIATION, ET ALJUDGMENT DATE 04/13/2016

JED DATE \_\_\_\_\_

Plaintiff's Attorney - Name, Address &amp; Telephone

Vs. Plaintiff(s)Name: CHESTER JENNINGS & SMITH, LLCDHARA & VIKAS, LLCAddress: 2882 CHURCH STREETVINDO PATEL A/K/A VINOD PATELATLANTA, GA 30344NAYNA PATELDefendant(s)Telephone: 404-953-5291

Fi.Fa. in Hands of: \_\_\_\_\_

CHESTER JENNINGS & SMITH, LLC

11 000000 11 000000 0000 0000  
Recorded 06/20/2016 08:49AM

Lien  
Doc: FIFA

CINDY MASON  
Clerk Superior Court, Columbia County  
B 10400 P 0148

### CANCELLATION

The within and foregoing Fi.Fa. having been paid in full, the Clerk of Superior Court is hereby directed to cancel it of record.

This the \_\_\_\_\_ day of \_\_\_\_\_,

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

You cause to be made the several sums set out in the foregoing recital of the judgment in this case and have the said several sums of money before the SUPERIOR Court of this County at the next term of court, with this Writ to render to said plaintiff(s) the principal, interest, attorney fees, and costs aforesaid.

Witness the Honorable J. WADE PADGETT, Judge of said CourtThis the 20th day of June, 2016

CLERK

By: \_\_\_\_\_

Deputy Clerk [Signature]

Entered on Lien Docket \_\_\_\_\_

Page \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

To all and singular the sheriffs of the State and their lawful deputies:  
In the above styled case, and on the judgment set out, the plaintiff(s) named above recovered against the defendant(s) named above, judgment in the following sums:

Principal	\$	<u>892,572.29</u>
Interest	\$	<u>0.00</u>
Other	\$	<u>0.00</u>
Attorney's Fees	\$	<u>133,706.17</u>
Court Costs	\$	<u>205.00</u>
Fi Fa Fees	\$	<u>12.00</u>
Total	\$	<u>1,026,495.46</u>

NOTE: \_\_\_\_\_

with future interest upon said principal amount from the date of judgment at the legal rate.

Therefore, YOU ARE COMMANDED, that of the goods and chattels, lands, and tenements of said defendant(s) and ESPECIALLY/ONLY of the following described property, to wit:

2016 JUN 20 AM 8:49  
FILED IN OFFICE  
10400  
CINDY MASON, CLERK

